

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

ABDULLAH OZKAN,

Plaintiff(s),

v.

AMERICAN CASINO & ENTERTAINMENT
PROPERTIES, LLC, et al.,

Defendant(s).

Case No. 2:14-CV-187 JCM (GWF)

ORDER

Presently before the court is a motion to dismiss filed by defendants American Casino & Entertainment Properties, LLP (“ACEP”) and Stratosphere Gaming, LLC (hereinafter “defendants”) pursuant to Fed. R. Civ. P. 12(b)(6). (Doc. #13). Plaintiff Abdullah Ozkan (hereinafter “plaintiff”) filed a response to the motion. (Doc. #15). Defendants filed a reply. (Doc. #17).

I. Background

On or about March 20, 2006, plaintiff was hired as a banquet supervisor by the Stratosphere Hotel (“Stratosphere”). He was later promoted to banquet manager. Plaintiff was terminated from this employment on January 26, 2012. Plaintiff alleges that he performed his job with few complaints until around May, 2011. He alleges that at this time, the catering director, Christina Rogers, created a hostile work environment by discriminating against plaintiff based on his age and national origin. Plaintiff is 51 years old and of Turkish origin.

Plaintiff claims that around May, 2011, he initiated a meeting with the vice president of food and beverage, Matt Mascali, to report Ms. Rogers’s hostile behavior. Plaintiff alleges that Ms. Rogers learned of this meeting and immediately demanded to meet with plaintiff. Plaintiff alleges that Ms. Rogers then demanded plaintiff inform her about what was discussed in the

1 meeting. Plaintiff states that he refused to disclose any facts of the confidential meeting with Mr.
2 Mascali to Ms. Rogers.

3 Plaintiff alleges that following that exchange, Ms. Rogers' behavior towards plaintiff
4 became "drastically hostile." (Doc. #6). Plaintiff claims that Ms. Rogers falsely accused
5 plaintiff of being a thief, among other accusations. Plaintiff alleges that Ms. Rogers made
6 discriminatory remarks about plaintiff's ethnicity, such as, "your Turkish mentality is affecting
7 your work." Plaintiff also alleges that Ms. Rogers made discriminatory comments about
8 plaintiff's age, for example, by stating that plaintiff was "too old and should be home taking care
9 of his children rather than working."

10 Plaintiff claims that on or about November 19, 2011, plaintiff wrote an email to Ms.
11 Rogers attempting to arrange a meeting to resolve the alleged hostile treatment and discuss Ms.
12 Rogers's alleged discriminatory comments. Plaintiff states that Ms. Rogers did not respond.

13 Plaintiff alleges that he then contacted Sharon D'Ambrosio, Stratosphere's human
14 resources director, to discuss the alleged discriminatory conduct. Plaintiff claims that Ms.
15 D'Ambrosio was of no help and that she directed plaintiff to report the issue to Mr. Mascali.
16 Plaintiff alleges that he tried to contact Mr. Mascali at that time and left a message, but that his
17 call was never returned.

18 Plaintiff claims that around November, 2011, plaintiff and other Stratosphere employees
19 took leftover food home after a banquet pursuant to normal practice. Plaintiff alleges that at this
20 time, Ms. Rogers's hostile treatment continued and that she stated, "I got him, this time the
21 Turkish guy cannot survive my department, and he has to go."

22 On or about May 14, 2012, plaintiff filed a formal charge of discrimination with the
23 Nevada Equal Rights Commission ("NERC"). In the NERC filing, plaintiff alleged facts to
24 support his claim that he had been subjected to illegal employment discrimination based on his
25 age and national origin. NERC forwarded a copy of plaintiff's charge to the U.S. Equal
26 Employment Opportunity Commission ("EEOC").

27 On or about December 23, 2013, the EEOC sent a right to sue letter to plaintiff fulfilling
28 his obligation to initiate an administrative claim before seeking review in this court. On

February 5, 2014, plaintiff filed the complaint in this case against Stratosphere Gaming, LLC, and its parent corporation, ACEP. (Doc. #1). On May 15, 2014, plaintiff filed an amended complaint. (Doc. #6). On June 20, 2014, defendants filed a motion to dismiss the amended complaint as to the retaliation claim and defendant ACEP. (Doc. #13).

II. Legal Standard

A court may dismiss a plaintiff's complaint for "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). A properly pled complaint must provide "[a] short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). While Rule 8 does not require detailed factual allegations, it demands "more than labels and conclusions" or a "formulaic recitation of the elements of a cause of action." *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949 (2009) (citation omitted).

"Factual allegations must be enough to rise above the speculative level." *Twombly*, 550 U.S. at 555. Thus, to survive a motion to dismiss, a complaint must contain sufficient factual matter to "state a claim to relief that is plausible on its face." *Iqbal*, 129 S.Ct. at 1949 (citation omitted).

In *Iqbal*, the Supreme Court clarified the two-step approach district courts are to apply when considering motions to dismiss. First, the court must accept as true all well-pled factual allegations in the complaint; however, legal conclusions are not entitled to the assumption of truth. *Id.* at 1950. Mere recitals of the elements of a cause of action, supported only by conclusory statements, do not suffice. *Id.* at 1949.

Second, the court must consider whether the factual allegations in the complaint allege a plausible claim for relief. *Id.* at 1950. A claim is facially plausible when the plaintiff's complaint alleges facts that allow the court to draw a reasonable inference that the defendant is liable for the alleged misconduct. *Id.* at 1949.

Where the complaint does not permit the court to infer more than the mere possibility of misconduct, the complaint has "alleged – but not shown – that the pleader is entitled to relief." *Id.* (internal quotations omitted). When the allegations in a complaint have not crossed the line

1 from conceivable to plausible, plaintiff's claim must be dismissed. *Twombly*, 550 U.S. at 570.

2 The Ninth Circuit addressed post-*Iqbal* pleading standards in *Starr v. Baca*, 652 F.3d
3 1202, 1216 (9th Cir. 2011). The *Starr* court stated, "First, to be entitled to the presumption of
4 truth, allegations in a complaint or counterclaim may not simply recite the elements of a cause of
5 action, but must contain sufficient allegations of underlying facts to give fair notice and to enable
6 the opposing party to defend itself effectively. Second, the factual allegations that are taken as
7 true must plausibly suggest an entitlement to relief, such that it is not unfair to require the
8 opposing party to be subjected to the expense of discovery and continued litigation." *Id.*

9 "In the absence of special circumstances, a parent corporation is not liable for the Title
10 VII violations of its wholly owned subsidiary." *Watson v. Gulf and Western Indus.*, 650 F.2d
11 990, 993 (9th Cir. 1980). Special circumstances that the court should consider may include (1)
12 proof of alter-ego liability; (2) evidence that the parent is liable for the debts of the subsidiary;
13 (3) whether the parent has "undercapitalized [the subsidiary] in a way that defeat[s] potential
14 recovery by the plaintiff; and (4) whether the parent "participated in or influenced the
15 employment policies of the subsidiary." *Id.*

16 **III. Discussion**

17 Plaintiff's complaint identifies four causes of action: (1) age discrimination in violation
18 of 29 U.S.C. § 623 *et. seq.*; (2) discrimination based on national origin under N.R.S. § 613.330 *et*
19 *seq.*, Title VII of the Civil Rights Act of 1964, and 42 U.S.C. § 1981; (3) hostile work
20 environment; and (4) retaliation. (Doc. #6).

21 Plaintiff concedes in his response to defendants' motion to dismiss that his retaliation
22 claim is barred because it was not asserted in his original NERC charge. (Doc. #15). Defendants
23 contend that plaintiff's remaining claims should be dismissed against defendant ACEP for failure
24 to state a claim on which relief can be granted. They argue that plaintiff fails to allege any facts
25 supporting ACEP's allegation or any theory of recovery against ACEP. (Doc. #13).

26 Plaintiff alleges the background facts described above in support of his complaint. (Doc.
27 #6). Plaintiff also presents additional allegations for each individual cause of action in his
28 complaint. Pursuant to the standard above, the court must take any well-pled, plausible

1 allegations in plaintiff's complaint as true in determining whether dismissal on the pleadings is
2 appropriate.

3 Plaintiff's allegations are insufficient to preclude dismissal of ACEP in this case. The
4 factual background of plaintiff's complaint does not mention defendant ACEP. In support of his
5 first cause of action, plaintiff alleges that "[d]efendants discriminated" against him on the basis
6 of his age. In support of his second cause of action, plaintiff claims that "[d]efendants, by and
7 through its [sic] management employees, subjected [him] to a hostile and discriminatory
8 environment based on national origin" In support of his third cause of action, plaintiff
9 alleges that he "was subjected to continuous and ongoing comments regarding his age and
10 national origin" based on Ms. Rogers's conduct. (Doc. #6).

11 As stated above, a parent company is generally not liable for any alleged discrimination
12 of its subsidiary absent special circumstances. Plaintiff's complaint does not include any
13 allegations of alter ego liability, undercapitalization, or debt liability.

14 Notably, in his response to the present motion, plaintiff claims that defendant ACEP has
15 failed to prove that it is "merely a parent," and that ACEP's website advertises that it "operates"
16 the Stratosphere property. (Doc. #15). This could be construed as alleging that the fourth
17 special circumstance mentioned in *Watson* is met, namely that ACEP "participated in or
18 influenced the employment policies of the subsidiary." *See Watson*, 650 F.2d at 993.

19 However, as defendants highlighted in their reply, this allegation was not made in the
20 complaint, but rather in the response to the present motion to dismiss. Therefore, it is not proper
21 for the court to consider it in judging the plaintiff's case on the pleadings.

22 Courts in this district have found that mere allegations of liability for Title VII
23 discrimination based on parent-subsidary status are insufficient to preclude dismissal. *See Fox*
24 *v. Sysco Corp.*, No. 2:11-cv-00424-RLH-PAL, 2011 U.S. Dist. LEXIS 134537 at *4-5 (D. Nev.
25 Nov. 21, 2011) (granting motion to dismiss Title VII claims against parent corporation where
26 complaint merely alleged that a parent-subsidary relationship existed, that parent "and/or"
27 subsidiary employed individuals who discriminated, and that "both entities acted through its
28 employees to discriminate against [plaintiff]"); *Cummings v. United Healthcare Svcs.*, No. 2:13-

1 cv-00479-APG-GWF, 2014 U.S. Dist. LEXIS 44789 at *7-9 (D. Nev. Mar. 31, 2014) (granting
2 motion to dismiss parent corporation where plaintiff pled a sole conclusory allegation that
3 defendants were all parent or subsidiary companies of one another and thus joint employers).

4 Plaintiff's complaint fails to allege any particular facts against ACEP that, when taken as
5 true, would meet any special circumstances to warrant holding ACEP liable in this case. All of
6 plaintiff's factual allegations refer to defendants generally, and plaintiff's allegations never
7 mention ACEP by name. As such, plaintiff fails to present any allegation that would warrant
8 departure from the general rule on parent-subsidary liability in discrimination cases as set forth
9 above.

10 For the foregoing reasons, the court will grant dismissal as to defendant ACEP for failure
11 to state a claim under Fed. R. Civ. P. 12(b)(6). The court will also dismiss plaintiff's retaliation
12 claim based on plaintiff's concession that this claim is barred.

13 **IV. Conclusion**

14 Accordingly,

15 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that defendants' motion to
16 dismiss (doc. #13) be, and the same hereby is, GRANTED consistent with the foregoing.

17 IT IS FURTHER ORDERED that plaintiff's complaint (doc. #6) is DISMISSED without
18 prejudice as to defendant American Casino & Entertainment Properties, LLC (ACEP).

19 IT IS FURTHER ORDERED that plaintiff's fourth cause of action for retaliation is
20 DISMISSED without prejudice.

21 DATED August 19, 2014.

22
23 
24 UNITED STATES DISTRICT JUDGE
25
26
27
28